

portion of bills.¹⁵² Although we need not rely on it to make our finding of checklist compliance, we receive some comfort from the fact that approximately 60 percent of the problem was fixed by September 22, 2002 with the remainder scheduled to be corrected in a system upgrade in December 2002.¹⁵³ Because we are assured that these inaccuracies have only a minor impact and appear to be diminishing, we reject Z-Tel's claims that any remaining inaccuracies in Verizon's wholesale bills are competitively significant.

45. *Inflated Usage Charges.* Z-Tel asserts that Verizon's carrier bills contained inaccurately inflated usage charges.¹⁵⁴ The record indicates that Verizon remedied the underlying system problem in May 2002.¹⁵⁵ Verizon acknowledged that it owed Z-Tel and other carriers credits for the amount over billed and engaged in calculating the appropriate credit by examining its past billing records.¹⁵⁶ Because Verizon's systems were fixed in May 2002 and because Verizon is committed to compensating competing carriers for its system error, we do not find that this issue rises to the level of checklist noncompliance. We nevertheless note that Verizon should endeavor to expeditiously provide bill credits in a timely manner when Verizon acknowledges they are due.

46. *Improperly Created Billing Account.* Z-Tel contends that Verizon improperly created an additional Z-Tel billing account which **has** been plagued with numerous improper charges making auditing its carrier bills difficult for Z-Tel.¹⁵⁷ Verizon recognized its error in creating this account in January 2002 and implemented system safeguards to prevent this error from recurring.¹⁵⁸ Moreover, Verizon has credited this Z-Tel account to balance at zero, has removed this unwanted account, and has recreated Z-Tel's BOS BDT bill for this account for the

¹⁵² Verizon states that adjustments for alternately billed calls represent **0.85%** of total billed charges on relevant accounts. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 60.

¹⁵³ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2

¹⁵⁴ Z-Tel Laughlin Decl., para. 11

¹⁵⁵ Verizon Virginia Reply at 45; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 56; Z-Tel Laughlin Decl., para. 11 (admitting that the symptoms of the problem disappeared after May 2002).

¹⁵⁶ Verizon Virginia Reply at 45-46; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 56; Verizon Oct. 7 Billing *Ex Parte* Letter at 1 and Attach. 1 (confirming that Verizon has credited Z-Tel's and other affected carriers' accounts for improperly inflated usage charges applied between March 2001 and May 2002); see *also* Verizon Oct. 9 Billing *Ex Parte* Letter at 1 & Attach. 1-2 (updating the Verizon Oct. 7 *Ex Parte* Letter with specific details regarding the credits applied to Z-Tel's account in Virginia).

¹⁵⁷ Z-Tel Laughlin Decl., para. 17. For instance, Z-Tel claims that, on this extra billing account, the statements of Z-Tel's usage are identified by unusual overlapping time periods. Z-Tel Laughlin Decl., para. 16.

¹⁵⁸ Verizon explains that the additional account was erroneously created by a representative in its National Marketing Center (NMC), but states that, in February 2002, Verizon removed the ability for representatives in the NMC to create such billing accounts. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 76. Now, such changes can be initiated only by a specialized group within Verizon's Wholesale Billing Claim Center. *Id.*

entire year to date.¹⁵⁹ Based on the record, we believe that this problem has been remedied and that Verizon has implemented systems fixes to prevent it *from* happening again.

47. **Zero Cost Line items.** Finally, we disagree with Z-Tel's charge that Verizon improperly includes zero charge line items on its bills for features included in the cost of the switch port without identifying a telephone number.¹⁶⁰ Verizon asserts that **these** zero charge line items indicate the final billing cycle for disconnected **accounts**.¹⁶¹ These charges appear to be appropriate and are limited to the increasingly insignificant number of bills generated by Verizon's legacy billing system.¹⁶² Because Verizon demonstrates valid reasons for the manner in which it presents information on carrier bills and demonstrates the minimal impact and occurrence of this information, Z-Tel's claims do not defeat Verizon's evidence demonstrating checklist compliance.

(ii) Double Billing

48. NTELOS contends that Verizon has continued to issue bills to end users even after the end user has been migrated to a competing carrier, resulting in the end user customer being "double billed" for service.¹⁶³ We reject NTELOS' argument that even minimal occurrences of double billing demonstrate checklist noncompliance. While NTELOS concedes that Verizon's "Double Billing Team" solution to double billing has improved matters, NTELOS asserts that the problem continues to affect NTELOS and its end-user customers.¹⁶⁴ Verizon explains that most double billing disputes arise when Verizon has provisioned the competing carrier's order and the competing carrier begins providing service to its end-user, but Verizon has not yet updated its billing systems to account for the change.¹⁶⁵ Although normally *this* billing update takes place very quickly, Verizon asserts that at times it can be delayed if there **are** inconsistencies between the order and Verizon's billing records, or if the provisioning completes when the carrier's bill has been "frozen" for monthly billing assessment.¹⁶⁶ The record indicates

¹⁵⁹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 76. We note that Z-Tel does not dispute that Verizon has fixed the problem.

¹⁶⁰ Z-Tel Laughlin Decl., para. 15

¹⁶¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 54.

¹⁶² Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2. See *infra* para. 53 (describing the minimal number of customers receiving legacy system bills)

¹⁶³ NTELOS Comments at 9

¹⁶⁴ NTELOS Comments at 9-10. Verizon states that its Double Billing Team, established in November 2000, is designed to address double billing complaints. Verizon McLean/Wierzbicki/Webster Decl., para. 155.

¹⁶⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 154

¹⁶⁶ Verizon McLean/Wierzbicki/Webster Decl., para. 154. An account is "frozen" for a period during which a retail or wholesale account cannot be updated, either for migrations to a new service provider or feature changes to an existing customer's service, in order to allow the system to generate bills based on a static record. *Verizon New* (continued....)

that Verizon's billing system is generally updated in a timely manner and **as** soon as the billing system is updated, Verizon automatically applies appropriate credits to the end user's bill.'" Verizon also describes how it engages its Double Billing Team to address cases of double billing.¹⁶⁸ Verizon asserts that the number of double billing complaints in Virginia has fallen dramatically over time. Verizon presents evidence that, in **April**, May, and July **2002**, there were only 18, 20, and 14 instances, respectively, of double billing in Virginia each of which was addressed by the Double Billing Team.¹⁶⁹ Finally, Verizon's commercial performance data demonstrate that provisioned orders are updated to the billing system in a timely manner.¹⁷⁰ Because Verizon demonstrates that instances of double billing appear to be minimal and continue to decrease, and NTELOS provides no data indicating otherwise, we do not find that NTELOS's claims rebut Verizon's evidence demonstrating checklist compliance.

(iii) Billing Dispute Resolution

49. Verizon presents a variety of evidence to show that it has dramatically reduced the number of outstanding billing disputes in Virginia, crediting this improvement to new internal management and an internal **task** force designed to improve billing claim resolution.'" Nevertheless, several competing carriers allege that Verizon's billing dispute process is inadequate. While several competing carriers express concern over the number of outstanding billing disputes they had and currently have with Verizon in Virginia, we disagree that Verizon's billing dispute resolution process is discriminatory.'" Consistent with the performance metrics that Verizon agreed to implement during the pendency of their section 271 application for Pennsylvania and that were negotiated through the collaborative process in New **York**, Verizon

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Jersey Order, 17 FCC Rcd at 12328, para. 113; *Verizon Pennsylvania Order*, 16 FCC Rcd at 1744647, para. 44, n.168.

¹⁶⁷ See Appendix B, OR4-17 (% Billing Completion Notifiers sent Within 2 Business Days); Verizon McLean/Wierzbicki/ Webster Decl., para. 154.

¹⁶⁸ Verizon McLean/Wierzbicki/Webster Decl., para. 154.

¹⁶⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 155; Verizon McLean/Wierzbicki/Webster Reply Decl. para. 77. Verizon asserts that double billing is appropriate when Verizon legitimately maintains part of a customer's account (in the case of a partial migration of service) or when Verizon continues to provide the end-user with directory advertising. Verizon McLean/Wierzbicki/Webster Decl., para. 155.

¹⁷⁰ Verizon consistently meets benchmark performance levels in OR-4. See Appendix B

¹⁷¹ Verizon McLean/Wierzbicki/Webster Decl., paras. 148-52

¹⁷² Z-Tel Comments at 5-6; Z-Tel Laughlin Decl., paras. 5, 18 & Attach. F; Covad Comments at 16 & App. B. We also note that NTELOS states that it has received a significantly greater amount of credits in 2002 than in received in **2001**. NTELOS Comments at 6. While NTELOS asserts that this demonstrates worse performance in 2002, we note that, beginning in January 2002, Verizon substantially increased settlement of older claims, some from 2001. See Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 149-51. Moreover, Verizon argues that it has credited NTELOS "substantially less" than the \$1.2 million dollars claimed by NTELOS to have been credited to it in 2002. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 55.

demonstrates that it responds to current billing disputes in a timely manner.¹⁷³ Verizon reduced its active monthly billing claims in Virginia from 1700 claims in January 2002 to less than 140 at the end of August.¹⁷⁴ Additionally, Verizon states that its “backlog” of old claims in Virginia has been significantly reduced, stating that only approximately 10% of pending claims are older than 30 days and demonstrates that this number is quickly shrinking.” We find that Verizon is generally addressing billing disputes in a timely manner.¹⁷⁶

50. Covad asserts that Verizon improperly back billed it for accrued line sharing charges.¹⁷⁷ In particular, while Covad anticipated that at some point they would be billed for past charges accrued for line sharing, Verizon billed Covad the aggregated charges accrued for the entire Verizon region on a bill normally containing charges associated with UNEs and services purchased for use in the state of New York, and without sufficient supporting detail.¹⁷⁸ Moreover, while this dispute has been closed, Covad argues that the nine months it took for Verizon to resolve this billing trouble ticket is indicative of Verizon’s failure to provide timely resolution to billing disputes.¹⁷⁹ We disagree with Covad that Verizon’s back billing for line sharing charges denies it a meaningful opportunity to compete. The record indicates that the impact of this dispute in Virginia was minimal.¹⁸⁰ Also, Verizon and Covad agreed at the outset that, while the line sharing UNE would be made available immediately, billing for this product would be delayed until prices were set and the billing system could be programmed.” Although

¹⁷³ Verizon has achieved perfect performance under its recently adopted performance standards. See BI-3-04 (% CLEC Billing Claims Acknowledged Within 2 Business Days) (100% performance in May and June 2002); 81-3-05 (% CLEC Billing Claims Resolved Within 28 Calendar Days After Acknowledgement) (100% performance in May and June 2002). Verizon also conducted a special study of these measures in April and May 2002 showing nearly perfect performance. Verizon McLean/Wierzbicki/Webster Decl., para. 150 & Attach. 20 (BI-3-04 (99% in April and 100% in May 2002) and 81-3-05 (100% in April and May 2002)).

¹⁷⁴ Verizon McLean/Wierzbicki/Webster Decl., para. 151; Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 67. This figure includes current monthly disputes which have consistently been resolved in a timely manner. Similarly, Verizon states that the dollar value of outstanding billing claims in Virginia has dropped from \$7 million to \$260,000 during the same time period. *Id.*

¹⁷⁵ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 67.

¹⁷⁶ We are concerned that Verizon may delay actually issuing credits to competing carriers when it resolves billing disputes in their favor and, if evidence of a systemic problem appears, we are prepared to take appropriate enforcement action.

¹⁷⁷ Covad Comments at 15-16. Similarly, Covad asserts that Verizon does not update new products into its billing systems in a timely manner, based on Verizon’s implementation of line sharing. Covad Comments at 18.

¹⁷⁸ Covad Comments at 16. Furthermore, Covad asserts that 30 percent of the charges were inaccurate. Covad Comments at 16.

¹⁷⁹ Covad Comments at 16.

¹⁸⁰ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 73

¹⁸¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 72

we are troubled by the manner in which Verizon chose initially to bill for this aggregate charge, this problem is relatively unique, has had a limited impact in Virginia, and further, has been corrected. Therefore, we do not find that Covad presents a sufficient rebuttal to Verizon's showing of checklist compliance.

51. WorldCom argues that Verizon's billing dispute process is "burdensome" because the paperwork required to initiate billing disputes is overly burdensome and Verizon requires that the paperwork be complete with details before Verizon will begin processing the dispute.¹⁸² Verizon first notes that WorldCom has never opened a billing claim in Virginia." Verizon also asserts that in order to investigate a claim, it must know certain details such as the account number and why certain charges are in dispute.¹⁸⁴ Moreover, Verizon indicates its willingness to address claims of systemic problems affecting a carrier based on a sample of the account, thus limiting the detail required to submit such a claim.¹⁸⁵ Based on the record, we do not find that WorldCom presents evidence that overcomes Verizon's evidence demonstrating its checklist compliance.

52. Covad claims that Verizon refuses to resolve its outstanding dispute regarding discounts for ISDN loops in accordance with the advanced service loop discount in the Bell Atlantic / GTE merger conditions.¹⁸⁶ Notably, Covad does not allege that Verizon's billing systems are to blame for this dispute. Rather, Covad's allegation is a matter of interpretive dispute regarding the meaning of certain terms in the Commission's merger order.¹⁸⁷ We note that Covad has attempted to raise this issue through Commission's Enforcement Bureau accelerated docket.¹⁸⁸ We believe that this type of dispute is best resolved through an enforcement proceeding.

¹⁸² WorldCom Comments at 15; WorldCom Lichtenberg Decl., paras. 13-15

¹⁸³ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 68

¹⁸⁴ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 68

¹⁸⁵ For example, Verizon slates that a claim does not need to identify every line item for every number that appears to be incorrect due to an alleged systemic error. Rather, the carrier can submit a sample of the problem and identify that the problem occurs on all of its accounts of a certain type. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 68.

¹⁸⁶ Covad Comments at 17.

¹⁸⁷ As we have stated in other section 271 orders, new interpretive disputes concerning the precise content of an incumbent LEC's obligations to its competitors and disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding. *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9075, para. 114; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17470, para. 92; *Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10; *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23.

¹⁸⁸ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 75 & Attach. 17 (Letter from Enforcement Bureau, dated June 4, 2001, finding that Covad's loop discount claim against Verizon is not appropriate for the Accelerated (continued....))

(iv) Other Billing Issues

53. Verizon primarily uses its expressTRAK billing system to bill both its retail customers **as well as** competing carriers for resale and a variety of UNE products.¹⁸⁹ However, a small number of **retail** and wholesale customers have yet to be converted from Verizon's legacy billing system to the expressTRAK system.¹⁹⁰ We find **unpersuasive** Z-Tel's assertion that, because some of Z-Tel's customers remain on Verizon's legacy billing system for which only separate retail-formatted bills are available, Verizon's billing systems do not provide a meaningful opportunity to compete.¹⁹¹ The record indicates that in July 2002, only 2 percent of billing account numbers in the state of Virginia remained on the legacy system and an equally small percentage of Z-Tel's customers were affected at that time.¹⁹² Additionally, we note that Verizon converted nearly all of Z-Tel's remaining legacy customers in Virginia to the expressTRAK billing system on September 14, 2002, leaving Z-Tel with only 0.4% of its customers served by the legacy billing system.¹⁹³ We recognize that this separate billing for a few of Z-Tel's customers may be inconvenient. However, because this problem **was** minimal at the time Verizon filed its application and has now been virtually eliminated, we do not find that this is competitively significant.

54. We also reject Cavalier's contention that Verizon fails this checklist item because when it provides data regarding calls between two competing carriers that route through a Verizon tandem switch, Verizon does not indicate whether the calls are local or toll.¹⁹⁴ Cavalier contends that **this** inadequacy causes competing carriers to improperly bill one another for access. However, Verizon claims to provide all of the information that Cavalier and other competing

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Docket, but making no determination on the merits of the claim and advising that the Commission's formal complaint process remains available **to** resolve this dispute).

¹⁸⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 135; see *supra* note 114 (listing the UNE products billed by expressTRAK).

¹⁹⁰ Verizon McLean/Wierzbicki/Webster Decl., para. 26.

¹⁹¹ Z-Tel alleges that the separate billing requires additional auditing resources because of its separate *nature* and its lack of BOS BDT functionality. Z-Tel Comments at 5; Z-Tel Laughlin Decl., paras. 12-14.

¹⁹² Verizon McLean/Wierzbicki/Webster Decl., para. 26. Verizon states that over **98%** of the amount billed to Z-Tel in Virginia in July **was** billed using the electronic BOS BDT. Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/ Webster Reply Decl., para. 59 & Attach. 8.

¹⁹³ Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 59; Verizon Sept. 20 Billing *Ex Parte* Letter at 2. Verizon also presents evidence that **following** the September 14 conversion, 99.7% of all competing carrier billing telephone numbers are served by expressTRAK. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 1.

¹⁹⁴ Cavalier Comments at 28-29 & Attachs. OSS-01, OSS-02, OSS-03; Cavalier Reply at 13-14; Letter from Alan M. Shoer, Assistant General Counsel, Cavalier Telephone, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 14, 2002) (Cavalier Oct. 14 Billing *Ex Parte* Letter).

carriers need to accurately bill each another for these calls.¹⁹⁵ The Commission consistently has interpreted a BOC's obligation to provide nondiscriminatory billing *OSS* to mean the provision of DUF information and carrier bills.¹⁹⁶ There is no clear precedent or Commission rule that would require Verizon to serve as a billing intermediary between two other carriers that exchange traffic transiting Verizon's network. We thus find that Cavalier's contention does not show checklist noncompliance. We are, however, encouraged that an industry-sponsored working group is actively working to resolve it.¹⁹⁷

55. Covad claims that Verizon is misapplying a variety of Covad's payments, resulting in overpayments in some accounts and underpayments, as well as late charges and disconnect notices, in other Covad accounts.¹⁹⁸ Verizon contends that the lone example Covad provides in its Reply Comments does not involve any Virginia accounts.¹⁹⁹ Further, Verizon asserts that it has reviewed 1000 wire transfers from Covad to Verizon between February and April 2002 finding 995 to be accurately applied while 5 remain under investigation.²⁰⁰ Without further evidence, Covad's claim appears to be irrelevant to our analysis of Verizon's OSS in Virginia. At any rate, we note that Covad has recently submitted its claim to Verizon's billing dispute resolution process, and thus is able to pursue resolution of this claim in a more appropriate forum.

d. Change Management

56. In order to demonstrate nondiscriminatory access to its OSS, Verizon must provide evidence that it adequately assists competing carriers in the use of its OSS.²⁰¹ Verizon

¹⁹⁵ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 58; see Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (Verizon Oct. 22 Billing *Ex Parte* Letter). The record indicates that Verizon provides the identification code (either the Carrier Identification Code (CIC) or the Operating Company Number (OCN)) of the originating and terminating carriers, the originating and terminating telephone numbers, and the minutes of use for each call. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 58; Verizon Oct. 22 Billing *Ex Parte* Letter at 1-2.

¹⁹⁶ See Appendix C.

¹⁹⁷ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 58 (noting the current discussion of this issue by the industry through the Ordering and Billing Forum (OBF) in the open OBF Issue 2309.

¹⁹⁸ Covad Reply at 6-7

¹⁹⁹ Verizon Sept. 20 Billing *Ex Parte* Letter at 2

²⁰⁰ Verizon Sept. 20 Billing *Ex Parte* Letter at 2.

²⁰¹ See Appendix C, para. 40.

provides evidence of its change management process as well as other support services and training it offers to competing carriers.²⁰²

57. WorldCom argues that Verizon did not adhere to its change management process in a recent system change.” Specifically, WorldCom contends that Verizon failed to provide notification under the change management process to competing carriers that it was implementing code into its ordering systems to embargo orders by delinquent competing carriers.²⁰⁴ We disagree with WorldCom’s assertion that Verizon must wait to “establish a new track record of compliance with its change management process,”” given Verizon’s long track record of compliance, even regarded by WorldCom as “the best in the country.”” Based on the record, we do not find that this isolated incident undermines Verizon’s strong pattern of adherence to its change management process and, thus, do not find that this claim rebuts Verizon’s demonstration of checklist compliance.

58. Finally, OpenBand argues that Verizon’s processes for addressing disputes are unnecessarily onerous and time consuming.²⁰⁷ OpenBand argues that the Commission should require Verizon to adopt a specific dispute resolution process modeled on the system the Maine Commission required Verizon to implement.²⁰⁸ However, OpenBand provides no details beyond its vague allegation. Because Verizon provides the same support systems for competing carriers in Virginia as it provides in states that have received section 271 approval²⁰⁹ and we have no allegation that Verizon has failed to adhere to its documented dispute processes, we do not find that OpenBand surmounts Verizon’s demonstration of checklist compliance.

2. UNE Combinations

59. To comply with checklist item 2, a BOC must also demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at

²⁰² Verizon McLean/Wierzbicki/Webster Decl., paras. 159-89

²⁰³ WorldCom Comments at 15; WorldCom Lichtenberg Decl., paras. 17-19.

²⁰⁴ Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 79-81; WorldCom Lichtenberg Decl., para. 17.

²⁰⁵ WorldCom Comments at 15. In reviewing change management processes, the Commission analyzes the adequacy of a BOC’s change management plan and whether the BOC has adhered to that plan over time. See Appendix C, para. 40.

²⁰⁶ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 79. WorldCom Lichtenberg Decl., para. 17

²⁰⁷ OpenBand Comments at 19-20.

²⁰⁸ OpenBand Comments at 20.

²⁰⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 159

the specific request of the competitive carrier.²¹⁰ Based upon the evidence in the record,²¹¹ we conclude, as did the Virginia Hearing Examiner, that Verizon has demonstrated that it provides nondiscriminatory access to network element combinations as required by the Act and our rules.²¹²

60. Some parties argue that Verizon has failed to comply with the Commission's rules regarding UNE combinations. Specifically, OpenBand contends that Verizon utilizes an extended and burdensome bona fide request (BFR) process that violates section 51.315(e) of the Commission's rules.²¹³ OpenBand urges the Commission to ensure that the BFR process is reserved for UNE combinations that are truly extraordinary, not routine or simple.²¹⁴ Verizon explains, however, that under the BFR process, a competitive LEC would not have the burden to establish the technical feasibility of any new combination of network element it seeks, but would be provided with a preliminary assessment of such feasibility within 30 days of its request.²¹⁵ Consequently, we conclude that the burden appropriately remains with Verizon, in its BFR process, to demonstrate technical feasibility and we are not persuaded that OpenBand's concern is sufficient to rebut Verizon's evidence demonstrating checklist compliance.

61. Starpower and US LEC argue that the statute does not support restrictions on the use of enhanced extended links (EELs) that allow the Commission to distinguish between UNE combinations and special access circuits.²¹⁶ According to Starpower, although the Commission ruled in the *UNE Remand Order* that UNEs could not be ordered in combination as a substitute for special access services, the statute does not distinguish between using UNEs for local exchange service and using them for exchange access.²¹⁷ In essence, these parties challenge the

²¹⁰ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315(b)

²¹¹ See Verizon Lacouture/Ruesterholz Decl., paras. 249-58.

²¹² Virginia Hearing Examiner's Repon at 77.

²¹³ The BFR process is used when the competitive LEC requests access to a UNE or UNE combination that is not currently offered in an interconnection agreement, SGAT, or tariff, and that Verizon is required to provide under applicable law. Under the BFR process, a preliminary analysis is conducted, including whether the request is a new UNE or UNE combination that is required to be provided under applicable law, an initial assessment of its technical feasibility, general product availability, and expected delivery date. This analysis is normally completed within 30 days. See Verizon Lacouture/Ruesterholz Decl., Attach. 16 (citing Verizon Wholesale Customer Handbook).

²¹⁴ OpenBand Comments at 17. Section 51.315(e), in relevant part, states that "[a]n incumbent LEC that denies a request to combine elements pursuant to [the Commission's rules] must prove to the state commission that the requested combination is not technically feasible. 47 C.F.R. § 51.315(e). OpenBand argues that section 51.315(e) of the Commission's rules provides that an incumbent that denies a competitor's request for UNE Combinations has the obligation of demonstrating to the state commission that the requested combination is not technically feasible. OpenBand Comments at 17.

²¹⁵ See Verizon Virginia Reply at 29, n.27; see also Verizon Lacouture/Ruesterholz Reply Decl., para. 102.

²¹⁶ Starpower/US LEC Comments at 7.

²¹⁷ Id.

reasoning of the *UNE Remand Order*. However, this issue is being addressed in pending rulemaking proceedings, which are more appropriate means of doing so. As the D.C. Circuit has held, allowing such collateral challenges could change *the* nature of section 271 proceedings from ~~an~~ expedited process focused on an individual applicant's performance into a wide-ranging, industry-wide examination of telecommunications law and policy.”

3. Pricing of Unbundled Network Elements

62. Checklist item two of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.” Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and **nondiscriminatory**.”²²⁰ Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates **for** network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.* Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements?”

²¹⁸ See *AT&T v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000). Furthermore, the Commission has an ongoing proceeding regarding the requirements for requesting carriers to use EELs to provide exchange access service. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3913-15, paras. 489, 492-96 (1999); Supplemental Order, 15 FCC Rcd 1760, 1761, para. 4 (1999); *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9592, para. 8 (2000) (*Supplemental Order Clarification*). The Commission presently conditions the use of EELs for exchange access to those carriers that provide a “significant amount” of local exchange service to a particular user. *Supplemental Order Clarification*, 15 FCC Rcd at 9592, para. 8. Verizon is legally obligated to convert special access arrangements to EELs if a competing carrier certifies that it provides a “significant amount” of local exchange service to the particular end user in accordance with the *Supplemental Order Clarification*. The Commission is also currently reconsidering the extent of an incumbent's obligation to provide access to certain unbundled network elements in its Triennial Review. See *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial Review*).

²¹⁹ 47 U.S.C. § 271(c)(2)(B)(ii).

²²⁰ 47 U.S.C. § 251(c)(3).

²²¹ 47 U.S.C. § 252(d)(1).

²²² See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515. The Supreme Court has recently upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs. *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1679 (2002).

63. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.²²³ We will, however, reject an application if "basic TELRIC principles **are** violated or *the* state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would **produce**."²²⁴ We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

a. **Background**

64. On November 8, 1996, the Virginia Commission adopted interim rates for UNEs and interconnection in accord with the Commission's pricing rules adopted in the *Local Competition First Report and Order*.²²⁵ Subsequently, on December 20, 1996, Verizon filed a statement of terms and conditions (Statement) generally available to the competitive LECs.²²⁶ On January 14, 1997, the Virginia Commission initiated a proceeding to replace the interim prices with permanent prices.²²⁷ The Virginia Commission requested that interested parties submit proposals for appropriate pricing methodologies and rates and explain the cost studies used to calculate their proposed rates, including any underlying policies or economic studies submitted in support of their cost models and pricing/rate proposals.²²⁸ The Virginia Commission also directed the staff of the Virginia Commission (Staff) to review and evaluate all of the pricing and rate proposals submitted by parties, including the underlying cost models and studies or other analyses, and present its findings, conclusions, and recommendations in a Staff report.²²⁹

65. Pursuant to the *Virginia Initial Pricing Order*, Verizon made significant changes to the models, cost studies, and supporting documentation that it had filed along with its

²²³ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted); *see also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

²²⁴ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted).

²²⁵ *See Verizon Virginia Application*, App. F, Vol. I, Tab I, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Order (rel. Jan. 14, 1997) (*Virginia Initial Pricing Order*) at 2.

²²⁶ *Virginia Initial Pricing Order* at 2-3.

²²⁷ *See generally Virginia Initial Pricing Order*.

²²⁸ *Id.* at 3, 7.

²²⁹ *Id.* at 10.

Statement.²³⁰ Two competitive LECs, AT&T and WorldCom, jointly sponsored the only other cost model, known as the Hatfield model (version 3.0), in this proceeding.²³¹ From April through June 1997, Verizon, AT&T, WorldCom, Virginia Cable Television Association (VCTA), and Cox Fiber Commercial Services filed direct and rebuttal testimony.²³² Moreover, the Staff issued approximately 500 data requests, performed telephone interviews and interrogatories, and participated in four cost model workshops.” The Staff issued its report on May 21, 1997 and recommended that both Verizon’s and AT&T/WorldCom’s cost models be modified for more accurate means of calculating Verizon’s costs.²³⁴ The Staff also reviewed the cost inputs provided by the parties and in a number of cases selected inputs different than those proposed by the parties.²³⁵ When data were available and the cost models allowed it, the Staff proposed specific rates, but in other instances it recommended that the parties re-run their cost models using the Staff’s recommended inputs.²³⁶

66. The Virginia Commission conducted evidentiary hearings in June and July 1997 on the inputs and assumptions underlying Verizon’s and AT&T/WorldCom’s cost studies.²³⁷ After considering the parties’ briefs, the *Virginia Staff Initial Pricing Report*, and the record amassed in the proceeding, the Virginia Commission issued an order on May 22, 1998.²³⁸ The

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See Verizon Virginia Application, App. F, Vol. 1, Tab 9, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Prefiled Staff Report (rel. May 21, 1997) (*Virginia Staff Initial Pricing Report*) at 6 (noting that Verizon made changes to its costs studies on February 14, 1997 and corrected errors and changed prices on April 23, 1997). Verizon used a series of models to conduct these studies and to project costs, including: the Ultimate Allocation Area Analysis (UAAA) model, the Loop Cost Analysis Model (LCAM), the Switching Cost Information System (SCIS), the common channel Switching Cost Information System (CCSIS), and the CapCost+ model. *Id.* at 24.

²¹¹ Verizon notes that the Staff did not submit its own cost model. Verizon Virginia Application, App. A, Vol. 3, Tab D, Declaration of Robert W. Woltz, Jr., Patrick A. Garzillo, and Marsha S. Prosini (Verizon Woltz/Garzillo/Prosini Decl.), para. 17.

²³² *Id.*, para. 18.

²³³ *Id.*, para. 19.

²³⁴ *Virginia Staff Initial Pricing Report* at 21-22. The Staff concluded that it was not necessary to choose one model over another to establish prices because “there are a relatively small number of critical assumptions that, when made consistent between the models, produce generally equal prices.” *Id.* at 22.

²³⁵ See generally *Virginia Staff Initial Pricing Report*.

²¹⁶ *Id.* Verizon notes that the Staff specifically requested that it recompute its proposed rates for end office ports, switching usage, tandem switching, signaling, and the daily usage tile. See Verizon Woltz/Garzillo/Prosini Decl., para. 19.

²¹⁷ Verizon Woltz/Garzillo/Prosini Decl., para. 20.

²³⁸ See Verizon Virginia Application, App. F, Vol. 10, Tab 26, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the (continued.. .)

Virginia Interim Pricing Order set forth the Virginia Commission's conclusions regarding the appropriate economic model for setting UNE rates and inputs to that model.²³⁹ Specifically, the Virginia Commission found that "prices of interconnection and network elements should be based on their total, forward-looking, long-run incremental costs," thereby adopting the Commission's TELRIC methodology to determine rates for UNEs and interconnection in Virginia.²⁴⁰ The Virginia Commission also found that Verizon's cost models relied on data that more closely related to actual operating conditions in Virginia and, therefore, adopted Verizon's models, except for the Network Interface Device (NID), for which the Virginia Commission agreed with the *Staff's* recommendation that the Hatfield model was more appropriate."²⁴¹

67. In the *Virginia Interim Pricing Order*, the Virginia Commission also set forth a number of conclusions and adopted key cost inputs, some of which differed from the parties' proposals. For example, the Virginia Commission determined that the switching equipment price discounts should reflect a mix of 85 percent replacement/new switches and 15 percent add-on/growth switches.²⁴² It also found that the overall, forward-looking cost of capital for Verizon is 10.12 percent, based on a 40/60 percent debt/equity ratio, a cost of debt of 7.6 percent, and a cost of equity of 11.8 percent."²⁴³ Based on the revised cost inputs, the Virginia Commission ordered Verizon to re-run its cost models for all rate elements, with one exception, using the new inputs.²⁴⁴ The one exception was the NID, where the Virginia Commission directed the Staff to determine the price using the cost inputs in the *Virginia Interim Pricing Order*."²⁴⁵ It also ordered

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Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Order (rel. May 22, 1998) (*Virginia Interim Pricing Order*).

²³⁹ See generally *Virginia Interim Pricing Order*

²⁴⁰ *Id.* at 5; Verizon Woltz/Garzillo/Prosini Decl., para. 22

²⁴¹ *Virginia Interim Pricing Order* at 5 n.3; Verizon Woltz/Garzillo/Prosini Decl., para. 22.

²⁴² *Virginia Interim Pricing Order* at 11. Initially, Verizon proposed that the switch discount reflect the price it expected to pay, on average, over the next five years for all the replacement and growth switches that it would introduce into its actual network. Based on this theory, Verizon advocated a switching mix of 37% new/replacement and 63% growth/add-on. See *Virginia Staff Initial Pricing Report* at 40, 88; Verizon Woltz/Garzillo/Prosini Decl., para. 61. The Staff found Verizon's method inappropriate for a TELRIC analysis. *Virginia Staff Initial Pricing Report* at 40. AT&T and WorldCom advocated a 100% replacement switch capacity, which the Staff also found inappropriate. *Id.* at 40, 85.

²⁴³ *Virginia Interim Pricing Order* at 6. Verizon proposed a cost of capital of 13.2 percent, based on a 23.8/76.2 debt/equity ratio, a cost of debt of 7.6 percent, and a cost of equity of 14.9 percent. See *Virginia Staff Initial Pricing Report* at 29. AT&T/WorldCom originally proposed a cost of capital of 9.8 percent, based on a 41/59 debt/equity ratio, a cost of debt of 7.4 percent, and a cost of equity of 11.5 percent. *Id.*

²⁴⁴ *Virginia Interim Pricing Order* at 18

²⁴⁵ *Id.*

the Staff to evaluate and report on the results of Verizon's re-run cost models to determine if Verizon accurately implemented the *Virginia Interim Pricing Order*.²⁴⁶

68. Once Verizon submitted revised cost studies, and parties commented on these revised studies and the *Virginia Interim Pricing Order* in general, the Staff issued its report on August 31, 1998.²⁴⁷ The Staff concluded that Verizon's cost analysis did, for the **most** part, apply the directives of the *Virginia Interim Pricing Order* accurately and **appropriately**.²⁴⁸ The Virginia Commission then reviewed the Staff's findings and recommendations, and evaluated, on its own, Verizon's re-run cost studies and interested parties' comments on the *Virginia Interim Pricing Order*, Verizon's re-run cost filing, and the *Virginia Staff Final Pricing Report*.²⁴⁹ On November 19, 1998, the Virginia Commission issued a brief order finding that UNE prices could be improved by revising the switching prices to reflect a switch equipment mix of 54 percent new/replacement switches and 46 percent add-on/growth switches.²⁵⁰ Based on this finding, the Virginia Commission ordered Verizon to re-run its cost model changing only the switch equipment mix.²⁵¹

69. After Verizon revised its switching rates based on the revised switching equipment mix, the Staff reviewed the revised rates and informed the Virginia Commission that it found that the new rates properly reflected the Virginia Commission's directives in the *Virginia Pricing Revision Order*.²⁵² The Virginia Commission subsequently issued its final order in the pricing proceeding on April 15, 1999.²⁵³ In this order, the Virginia Commission restated **or**

²⁴⁶ *Id.*

²⁴⁷ See Verizon Virginia Application, App. F, Vol. 10, Tab 33, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Report of Division of Communications, Division of Economics and Finance, and Office of General Counsel (rel. Aug. 31, 1998) (*Virginia Staff Final Pricing Report*); Verizon Woltz/Garzillo/Prosini Decl., para. 25.

²⁴⁸ *Virginia Staff Final Pricing Report* at 4; Verizon Woltz/Garzillo/Prosini Decl., para. 25.

²⁴⁹ Verizon Virginia Application, App. F, Vol. 10, Tab 38, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Order (rel. Nov. 19, 1998) (*Virginia Pricing Revision Order*) at 2; Verizon Woltz/Garzillo/Prosini Decl., para. 27.

²⁵⁰ *Virginia Pricing Revision Order* at 2; Verizon Woltz/Garzillo/Prosini Decl., para. 27.

²⁵¹ *Virginia Pricing Revision Order* at 2; Verizon Woltz/Garzillo/Prosini Decl., para. 27.

²⁵² Verizon Virginia Application, App. F, Vol. 10, Tab 40, Ex Parte: To Determine Prices Bell Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Comments of the Commission Staff (rel. Dec. 21, 1998) at 1. Verizon notes that no other comments were filed. Verizon Woltz/Garzillo/Prosini Decl., para. 28.

²⁵³ Verizon Virginia Application, App. F, Vol. 10, Tab 41, Ex Parte: To Determine Prices Bell Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act (continued....)

further explained decisions made in its prior orders, including its adoption of TELRIC and its use of Verizon's cost models with the one exception for the NID.²⁵⁴ Moreover, as it had done in the earlier orders, the Virginia Commission adopted certain key inputs, including a restatement of the switching equipment price discount mix of 54 percent new/replacement and 46 percent add-on/growth.²⁵⁵ Concluding that Verizon's revised costs models and accompanying rates appropriately reflected its earlier directives, the Virginia Commission adopted the updated rate schedule that Verizon submitted pursuant to the *Virginia Pricing Revision Order*, with some exceptions, as the permanent rates that Verizon could charge competitive LECs in Virginia.²⁵⁶

70. Beginning in late 1999, after it adopted the *Virginia Final Pricing Order*, the Virginia Commission issued various orders declining to act pursuant to section 252 of the Communications Act.” Specifically, it declined to arbitrate the terms and conditions of interconnection agreements under federal standards, as required by section 252(c).²⁵⁸ The Virginia Commission explained that it had concluded it could not apply federal standards in interconnection arbitrations without potentially waiving its Eleventh Amendment sovereign immunity, which it did not have the authority to do.²⁵⁹ As a result, a number of rates for UNEs that incumbent LECs are required to provide to competitive carriers, including elements that this Commission established in the *UNE Remand Order*, were not established by the Virginia

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of 1996 and Applicable State Law, Case No. PUC970005, Final Order (rel. Apr. 15, 1999) (*Virginia Final Pricing Order*).

²⁵⁴ *Virginia Final Pricing Order* at 5-6, 16; Verizon Woltz/Garzillo/Prosini Decl., para. 29.

²⁵⁵ *Virginia Final Pricing Order* at 17; Verizon Woltz/Garzillo/Prosini Decl., para. 61.

²⁵⁶ *Virginia Final Pricing Order* at 25-27; Verizon Woltz/Garzillo/Prosini Decl., para. 29

²⁵⁷ 47 U.S.C. § 252

²⁵⁸ 47 U.S.C. § 252(c). Section 252(c) requires that, in arbitrating an interconnection agreement, a state commission apply the “requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251” and apply the pricing standards of section 252(d). 47 U.S.C. § 252(c)(1) – (2). The Virginia Commission declined to follow section 252(c), offering instead to apply Virginia state law in its disposition of the three requesting carriers’ disputes with Verizon. See *Petition of MCI Metro Access Transmission Services of Virginin, Inc. and MCI WorldCom Communications of Virginia, Inc. for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginin, Inc.*, Case No. PUC000225, Order, at 3 (Virginia Commission, Sept. 13, 2000) (*WorldCom Virginia Order*); *Petition of Cox Virginia Telcom, Inc.*, Case No. PUC000212, Order of Dismissal, at 5 (Virginia Commission, Nov. 1, 2000); *Petition for Declaratory Judgment and Application for Arbitration of AT&T Communications of Virginia, Inc., et al.*, Case Nos. PUC000261 and PUC000282, Order, at 3 (Virginia Commission, Nov. 22, 2000).

²⁵⁹ See, e.g., *WorldCom Virginia Order* at 2. Cf. *Petition of Cavalier Telephone, LLC*, Case No. PUC990191, Order, at 3-4 (Virginia Commission, June 15, 2000) (“We have concluded that there is substantial doubt whether we can take action in this matter solely pursuant to the Act, given that we have been advised by the United States District Court for the Eastern District of Virginia that our participation in the federal regulatory scheme constructed by the Act, with regard to the arbitration of interconnection agreements, effects a waiver of the sovereign immunity of the Commonwealth.”).

Commission. As described above, this led to an arbitration of Virginia interconnection agreements by this Commission's Wireline Competition Bureau, acting on delegated authority. The cost portion of that arbitration is still pending.

71. Consequently, Verizon needed to establish rates for the UNEs that were not set by the Virginia Commission. These "proxy rates," which became effective on March 22, 2002, were set in one of three ways, all of which, Verizon claims, "produce rates that fall within the range that a reasonable application of TELRIC principles would produce and are consistent with this Commission's precedent." Verizon initially determined whether an element involved the same or similar functions and the same or similar work activities as an element for which the Virginia Commission had established a rate. If Verizon found such a "comparable" element, it would charge the same rate, unless any Virginia competitive LEC was paying less for that element under an interconnection agreement at the time Verizon set these rates, in which case Verizon adopted the lower rate state-wide.²⁶²

72. If Verizon did not find a comparable element established by the Virginia Commission, it adopted the rate established for the same or a comparable element in New York, adjusted to reflect the differences in costs between New York and Virginia.²⁶³ Again, if a competitive LEC was paying Verizon a lower rate than the cost-adjusted New York rate under the terms of an existing Virginia interconnection agreement at the time Verizon set the rates, Verizon adopted the lower rate state-wide.²⁶⁴

²⁶⁰ Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 35. On March 22, 2002, Verizon sent a letter to Competitive LECs operating in Virginia informing them of the availability of these rates. See Verizon Woltz/Garzillo/Prosini Decl., para. 42.

²⁶¹ Verizon Virginia Application at 53-54; Verizon Woltz/Garzillo/Prosini Decl., para. 35.

²⁶² Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 35. For example, Verizon used the service order rate element for a basic loop (which the Virginia Commission had set in the pricing proceeding) for the service order rate element for the distribution two-wire subloop (which the Virginia Commission had not set). Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 35.

²⁶³ Verizon Virginia Application at 54; Verizon Woltz/Garzillo/Prosini Decl., para. 36. Verizon provides the examples of recurring rates for DS3 loops and SMDI ports as rates that were not comparable to any UNEs that were part of the state's pricing proceeding. Verizon Woltz/Garzillo/Prosini Decl., para. 36. Verizon states that it used the New York rates that were approved by the New York Commission on January 28, 2002. *Id.*, para. 38 n. 2 (citing New York PSC, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-1357, Order On Unbundled Network Element Rates (rel. Jan. 28, 2002)). In order to determine the cost adjustment between Virginia and New York, Verizon used the Commission's Synthesis Cost Model (Synthesis Model), which showed relevant loop costs in Virginia to be 35% higher than in New York and relevant port costs in Virginia to be 1% lower than in New York. Verizon Woltz/Garzillo/Prosini Decl., paras. 37-38.

²⁶⁴ Verizon Virginia Application at 54; Verizon Woltz/Garzillo/Prosini Decl., para. 36.

73. For the few UNE rates for which there was no comparable element rate adopted by the Virginia Commission and for which the Synthesis Model did not provide a comparison of relative cost levels (e.g., non-recurring rates), Verizon adopted the New York rates without any adjustment.²⁶⁵ Verizon states that it adopted these New York non-recurring elements because the non-recurring service order costs in Virginia and New York have the **same** work activities and virtually identical **task** times and **the** underlying non-recurring provisioning activities and processes are virtually the same in both states.²⁶⁶ Also, as with the first two methods, if a competitive LEC was paying Verizon a lower rate than the New York rate under the terms of an existing Virginia interconnection agreement at the time Verizon set the rates, Verizon adopted the lower rate **state-wide**.²⁶⁷

b. The Virginia Arbitration

74. AT&T and WorldCom argue that the cost issues pending in the Virginia Arbitration Proceeding²⁶⁸ must be resolved prior to any finding that Verizon's current UNE rates are TELRIC-compliant and request that we consider evidence submitted in that proceeding that, they allege, demonstrates that Verizon's Virginia UNE rates are no longer **TELRIC-compliant**.²⁶⁹ Both AT&T and WorldCom participated in the cost portion of the Virginia Arbitration Proceeding and submitted extensive evidence concerning cost issues. Specifically, **as** evidence that Verizon's Virginia UNE rates are above cost, both AT&T and WorldCom point out that they (jointly) proposed lower rates for some UNEs in the Virginia Arbitration Proceeding, as did Verizon itself?" AT&T claims that the evidence submitted in that proceeding shows that

²⁶⁵ Verizon Virginia Application at 56; Verizon Woltz/Garzillo/Prosini Decl., para. 39. The Virginia Hearing Examiner's Report described only the first two methods but not the third method of adopting actual New York rates. See Virginia Hearing Examiner Report at **86-87**.

²⁶⁶ Verizon Virginia Application at 56; Verizon Woltz/Garzillo/Prosini Decl., para. 39.

²⁶⁷ Verizon Virginia Reply at 52

²⁶⁸ See **generally** *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251 (*Virginia Arbitration Proceeding*).

²⁶⁹ See AT&T Comments at 5-7; AT&T Reply at 3-4; WorldCom Comments at **16-17**. AT&T claims that this is true for both recurring and nonrecurring costs, and true whether the TELRIC cost estimates are based on AT&T/WorldCom's **cost** model or Verizon's cost models. AT&T Comments at 6.

²⁷⁰ AT&T Comments at 6, 9; WorldCom Comments at 16. AT&T also argues that proposed rate reductions submitted by Verizon in the Virginia arbitration proceeding are "an eloquent admission" that Verizon's **current** rates are indefensible. AT&T Comments at 9.

Verizon's Virginia UNE rates are "far in excess of TELRIC-compliant levels."²⁷¹ Like AT&T, WorldCom states that competitive LECs demonstrated to this Commission in the Virginia Arbitration Proceeding that proper UNE rates are less than half of Verizon's current rates.²⁷²

75. In prior section 271 decisions, we have determined that the existence of a new cost proceeding in the applicant state should not affect our review of the currently effective rates submitted with a section 271 application.²⁷³ The situation here is the same, and, thus, we disagree with commenters that the cost issues pending in the Virginia Arbitration Proceeding must be resolved prior to any finding that Verizon's current LNE rates are **TELRIC-compliant**²⁷⁴ and also find that it would be arbitrary and inappropriate to permit AT&T and WorldCom to rely in this proceeding on evidence submitted in what is the equivalent of a new cost proceeding before this Commission.²⁷⁵

76. The existence of a pending proceeding to establish new UNE rates for Virginia interconnection agreements does not, in itself, prove that existing rates are not TELRIC-compliant. The Commission has recognized that rates may well evolve over time to reflect new information on cost study assumptions and changes in technology, engineering practices, or

²⁷¹ AT&T Comments at 9. *See* also AT&T Reply at 3-4 (relying on evidence in the Virginia Arbitration Proceeding to show that Verizon's UNE rates exceed TELRIC-compliant levels).

²⁷² WorldCom Comments at 17, 19. In addition, WorldCom argues that it would be entirely inconsistent with the Act's requirement of cost-based rates to allow a BOC to obtain section 271 authorization where competitive LECs have convincingly shown that current rates are far above cost. *Id.*

²⁷³ *See Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247; *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066, para. 96.

²⁷⁴ For example, AT&T states that, until the Commission resolves the cost issues pending in the Virginia Arbitration Proceeding, there is "no reasoned basis for finding that Verizon's existing rates are TELRIC-compliant." AT&T Comments at 11. Similarly, NTELOS argues that the cost issues in the Virginia Arbitration Proceeding must be settled before Verizon is granted section 271 authority in Virginia. NTELOS Comments at 3. NTELOS maintains that, without "final UNE pricing standards, competitive LECs in Virginia lack a true picture of their costs and cannot effectively create business plans to serve customers in the Commonwealth." *Id.* NTELOS argues that this uncertainty concerning UNE pricing will only increase as more interconnection agreements expire and recommends that the Commission expeditiously complete its deliberations concerning cost issues. *Id.* at 6. We disagree with NTELOS that there are no final UNE pricing standards in Virginia and that the pending arbitration decision on cost issues creates uncertainty for competitive LECs. As discussed above, the Virginia Commission established permanent UNE rates for the vast majority of UNEs and, for other UNEs, Verizon adopted rates that it believes are TELRIC-compliant. *See supra* discussion paras. 64-73. Thus, Competitive LECs have pricing standards in place today that can be relied upon until the cost issues in the Virginia Arbitration Proceeding are resolved.

²⁷⁵ Although the Virginia Arbitration Proceeding is technically not a generic cost proceeding, resolution of the cost issues pending there will result in new UNE rates that will be available to other competitive LECs via section 252(i). *See* 47 U.S.C. § 252(i). For this reason, we view the cost portion of the Virginia Arbitration Proceeding as equivalent to a new cost proceeding to establish UNE rates.

market **conditions**.²⁷⁶ States review their rates periodically to reflect changes in costs and technology, and the simple fact that a cost factor may change does not invalidate rates that were originally set in accordance with TELRIC principles. As we have stated previously, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself.” Such a requirement would likely limit the ability of incumbent LECs to file their section 271 applications to specific windows of opportunity immediately after state commissions have approved new rates to ensure approval before the costs of inputs have changed. We doubt that Congress, which directed us to complete our section 271 review process within 90 days, intended to burden the incumbent LECs, the states, or the Commission with the additional delays and uncertainties that would result from such a requirement.

77. As the D.C. Circuit stated, “[i]f new [cost] information automatically required rejection of section 271 applications, **we** cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological **change**.”²⁷⁸ For this reason, the Commission has consistently held that the existence of a new cost proceeding is insufficient reason to find that a state’s existing rates do not satisfy TELRIC principles.²⁷⁹ We decide the merits of Verizon’s section 271 application based on its present rates, and it would be arbitrary and inappropriate for the Commission to consider other rates that have been proposed in another proceeding.” The fact that the other proceeding is pending before this Commission instead of the Virginia Commission does not warrant a different result, as the Commission is acting in the Virginia Arbitration Proceeding in lieu of the state commission. Thus, except for specific evidence submitted by the commenters in this proceeding concerning Verizon’s existing Virginia UNE rates, **we** decline to consider cost evidence or proposed rates submitted in the Virginia Arbitration Proceeding that AT&T and WorldCom attempt to incorporate here by reference.²⁸¹

²⁷⁶ *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff’d*, *AT&T Corp. v. FCC*, 220 F.3d at 617.

²⁷⁷ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066, para. 96

²⁷⁸ *AT&T v. FCC*, 220 F.3d at 611

²⁷⁹ See, e.g., *Verrzon Rhode Island Order*, 17 FCC Rcd at 3323, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff’d*, *AT&T Corp. v. FCC*, 220 F.3d at 617.

²⁸⁰ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9067, para 97 (concluding **that** it would be arbitrary and inappropriate for the Commission to consider other rates that had been proposed in a pending state rate proceeding).

²⁸¹ See, e.g., WorldCom Comments at 19 (attempting to incorporate by reference, for all elements, the evidence that WorldCom and AT&T submitted in the Virginia Arbitration Proceeding).

c. Complete-As-Filed Requirement

78. Before evaluating Verizon's compliance with the pricing-related requirements of checklist item two, we discuss why we accord evidentiary weight to rate reductions that Verizon filed on October 3, 2002. As discussed previously, the Commission maintains certain procedural requirements governing BOC section 271 applications.²⁸² In particular, the "complete-as-filed" requirement provides that, when an applicant files new information after the deadline for filing comments, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.²⁸³ We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record." The Commission may waive its procedural rules, however, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.""

79. We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules²⁸⁶ to the extent necessary to consider rate reductions filed by Verizon on day 63 of the 90-day period for Commission review of the Virginia application.²⁸⁷ We conclude that the special circumstances before us here warrant a deviation from the general rules for consideration of late-filed information or developments that take place during the application review period. In particular, as we discuss below, we find that the interests our procedural requirements are designed to protect are not affected by our consideration of these late-filed rate reductions. We also conclude that consideration of the rate reductions will serve the public interest. We will continue to enforce our procedural requirements in future section 271 applications, however, in the absence of such special circumstances, in order to ensure a fair and orderly process for the consideration of section 271 applications within the 90-day statutory review period.

²⁸² See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (*Mar. 23, 2001 Public Notice*); *Verizon Pennsylvania Order*, 16 FCC Rcd 17419, 17472-73, para. 98; *Venzon Connecticut Order*, 16 FCC Rcd 14147, 14163-64, paras. 34-38; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247-50, paras. 20-27; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-69, paras. 32-37; *Ameritech Michigan Order*, 12 FCC Rcd 20543, 20570-76, paras. 49-59.

²⁸³ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

²⁸⁴ See *Ameritech Michigan Order*, 12 FCC Rcd at 20572-73, paras. 52-54.

²⁸⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

²⁸⁶ 47 C.F.R. § 1.3.

²⁸⁷ See *Comments Requested in Connection with Verizon's Section 271 Application for Virginia*, Public Notice, WC Docket No. 02-214, DA 02-2525 (rel. Oct. 4, 2002) (attaching *ex parte* submission of Verizon, dated Oct. 3, 2002, proposing significant reductions in Verizon's Virginia switching rates).

80. There are special circumstances here that satisfy the test **for** grant of a waiver described above. First, *the* rate changes at issue are limited. Verizon lowered only its switching rates to meet a non-loop benchmark analysis to New **York** rates. Verizon has not modified its rate structure, its loop rates, or other rates contained in its original filing. **As** a result, addressing the effect of this rate reduction placed a limited additional analytical burden on the Commission staff and interested parties. Moreover, Verizon's rate reductions have already taken effect,²⁸⁸ so there is no concern that the Commission is approving a "promise[] of future **performance**."²⁸⁹ Nor is this a situation where the BOC implements measures (such as changes to its OSS) designed to achieve nondiscriminatory performance in the applicant's provision of service to competitive LECs, the effectiveness of which would be difficult to measure in advance.

81. Second, interested parties have had **an** opportunity to evaluate the new rates and to *comment*. Numerous parties had already *commented* or made *ex parte* filings regarding Verizon's Virginia switching rates as compared with existing New York rates. Thus, it **was** not unduly burdensome for *commenters* to respond to Verizon's rate reduction in a relatively short period of **time**.²⁹⁰ Moreover, the limited nature of these rate changes and the fact that Verizon has been engaged in efforts to address Commission concerns and clarify the basis for the reductions have permitted the Commission staff to evaluate the change within the 90-day review period.

82. Third, although parties made several general allegations concerning Verizon's Virginia UNE rates, it was only in the reply comment stage of this proceeding that *commenters* made specific allegations concerning some of the factors and calculations underlying the rates."²⁹¹ Thus, the timing of Verizon's response to these challenges was necessarily late; while Verizon filed its rate reduction in a timely way to address *commenters'* concerns, because the challenges were raised only in reply comments, or on day **42** of the 90-day process, the reductions were necessarily filed after the reply comments. In filing its reduced switching rates, Verizon explained that, while it considered its original switching rates to be TELRIC-compliant, it was voluntarily reducing its rates *"to eliminate any possible argument that these rates exceed the TELRIC range."*²⁹² On October 3, 2002, Verizon reduced its per-minute originating unbundled

²⁸⁸ *Id.* at 1

²⁸⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20573, para. 55 (emphasis omitted).

²⁹⁰ Indeed, AT&T seems to have anticipated Verizon's reliance on a non-loop benchmark in its initial comments. See AT&T Comments at 3-5; AT&T Pitkin Decl., paras. 11-26 (discussing why a switching-only benchmark analysis is appropriate in addition to a non-loop benchmark analysis). We note that only AT&T submitted comments on Verizon's rate reduction. AT&T submitted Supplemental Comments on October 9, 2002.

²⁹¹ Comments on the application focused almost entirely on the age **of** data underlying the rates; it was only at the reply stage that specific challenges to the rate structure and rate calculation were made. See, e.g., AT&T Reply at 6-8 (addressing, for the *first* time, the decision by the Virginia Commission to alter the switch discount *mix*).

²⁹² Letter **6**om Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-214** (filed Oct. 3, 2002) (Verizon Oct. 3 Pricing *Ex Parte* Letter) at 1

switching rate from \$.004129 to \$.002643, and its per-minute terminating unbundled switching rate from \$.002079 to \$.001331, effective immediately. Verizon states that it also notified all competitive LECs of the new rates.²⁹³

83. We also conclude that grant of this waiver will serve the public interest and thus satisfy the second element of the waiver standard described above. In particular, grant of this waiver permits the Commission to act on this section 271 application quickly and efficiently while allowing Verizon to respond constructively to criticism in the record concerning its rate levels by making pro-competitive rate reductions. Given that interested parties have had an opportunity to comment on these rate reductions and that comments filed by interested parties seem to support a benchmark analysis of Verizon's non-loop UNE rates," we do not believe that the public interest would be served in this instance by strict adherence to our procedural rules. Nor do we need to delay the effectiveness of this Order, as we did in the *SWBT Kansas/Oklahoma Order*.²⁹⁵ In contrast to that situation, here the commenters themselves dictated the timing by making the arguments Verizon addresses only at the reply comment stage.²⁹⁶ As we made clear above, however, we do not intend to allow a pattern of late-filed changes to threaten the Commission's ability to maintain a fair and orderly process for consideration of section 271 applications.

84. As discussed below, Verizon's reduced switching rates cause its non-loop rates, which include switching rates, to pass a benchmark comparison to its New York non-loop rates. These reductions address concerns raised in the comments on Verizon's Virginia switching rates. will promote local competition in Virginia, and are in the public interest. Thus, consistent with our prior orders, we will consider these new, lower rates without requiring Verizon to re-file its section 271 application.²⁹⁷

85. Finally, notwithstanding the Commission's decision occasionally to waive its general procedural rules governing section 271 applications, where warranted, we believe that

²⁹³ *Id.* at 2.

²⁹⁴ See Comments of AT&T at 3-4 (arguing that a benchmark comparison of loop rates alone is incomplete); WorldCom Comments at 17 (noting that Verizon failed to include, in its application, a benchmark comparison of its non-loop rates).

²⁹⁵ See *SWBT Kansas/Oklahoma Order*. 16 FCC Rcd at 6249, para. 26,6263, para. 52,6270, para. 72.

²⁹⁶ Both AT&T and WorldCom referred in their Comments to arguments "already before this Commission" in the pending Virginia Arbitration Proceeding; as we explain above, at para. 77 *supra*, that proceeding is separate from the instant section 271 application, and we decline to incorporate the entire arbitration proceeding record into this section 271 record, or to address here arguments raised only in that proceeding. Once Commission Staff informed the commenters of this position, commenters specified arguments they wanted the Commission to consider in this proceeding.

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See *SWBT Kansas/Oklahoma Order*. 16 FCC Rcd at 6247-50, paras. 22-27; *Verizon Rhode Island Order*, 17 FCC Rcd at 3305-10, paras. 7-17.

our procedural requirements have led to the filing of applications that contain a tremendous amount of detail and are largely complete. The vast amount of evidence that BOCs submit on the day of filing dwarfs the relatively small amount of subsequent evidence we have considered pursuant to waiver.

d. Recurring Charges

86. Based on the evidence in the record, we find that Verizon's Virginia UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). **Thus**, Verizon's Virginia UNE rates satisfy checklist item two. As discussed below, substantial questions have been raised in the record about whether Verizon's Virginia UNE rates were adopted through a proceeding which correctly applied TELRIC principles in all instances. In response to these allegations, Verizon voluntarily reduced some of its UNE rates to meet a benchmark comparison to non-loop rates in New York.²⁹⁸ As discussed below, Verizon's Virginia UNE rates **pass** our benchmark test, and therefore, satisfy the requirements of checklist item two.

87. In their initial comments, AT&T and WorldCom generally allege that Verizon's UNE rates are not TELRIC-compliant due to the age of the data underlying the rates and to alleged TELRIC errors made by the Virginia Commission when it established these rates. Specifically, AT&T argues that rates established by the Virginia Commission in its *Virginia Final Pricing Order* are too old to rely on now, and WorldCom agrees, stating that "[e]ven if the current rates were reasonable at the time they were set . . . they are clearly not within a reasonable range of TELRIC rates **today**."²⁹⁹ According to AT&T and WorldCom, Verizon's Virginia UNE rates suffer from various TELRIC errors and are far too high to be TELRIC-compliant **now**.³⁰⁰

²⁹⁸ See Verizon Oct. 3 Pricing *Ex Parre* Letter at 1-2. Specifically, Verizon reduced its per-minute originating unbundled switching rate from \$.004129 to \$.002643, and its per-minute terminating unbundled switching rate from \$.002079 to \$.001331, effective October 3, 2002. *Id.* at 1. As discussed herein, see *supra* paras. 14-115, Verizon agreed to true-up these switching rates to those switching rates that are adopted in the Virginia Arbitration Proceeding and will apply the arbitrated rates retroactive to August 1, 2002. *Id.*

²⁹⁹ AT&T Comments at 6-9; WorldCom Comments at 17. Both commenters assert that all the rates, both recurring and non-recurring, set by the Virginia Commission in its 1999 *Virginia Final Pricing Order* are too old to rely on here; however, because the specific arguments and discussion regarding the "stale data" issue address only recurring charges, specifically loops and switching, we address them here. AT&T suggests that some of the rates established by the Virginia Commission in its 1999 order were not TELRIC-compliant even then. AT&T Reply at 5; AT&T Baranowski Reply Decl., paras. 9-13; see discussion paras. 96-98, *infra*. See also AT&T Supplemental Comments at 8-10 (countering Verizon's responses to, among other things, arguments made concerning the age of the data underlying the switching rates set by the Virginia Commission). AT&T also asserts that some rates (*e.g.*, rates for elements established in the *UNE Remand Order*) were not adjudicated in the Virginia UNE rate case **and**, as a result, should not be relied upon here. AT&T Comments at 10. These rates are discussed *infra*, paras. 122-31.

³⁰⁰ AT&T Comments at 6-9; AT&T Reply at 3-8; WorldCom Comments at 16-18; WorldCom Reply at 4-6. For instance, WorldCom argues that, although it understands the Commission's principle of deference to reasonable state commission decisions in the section 271 context, this principle simply cannot justify approval of a section 271 application where rates far exceed costs. WorldCom Reply at 6. If a state commission has made a series of "non-(continued....)"

88. As discussed above, the Commission has recognized that rates may well evolve over time to reflect new information on cost study inputs and changes in technology, engineering practices, or market conditions.³⁰¹ We find that the evidence of changed circumstances submitted by AT&T and WorldCom fails to demonstrate that the Virginia Commission committed any clear error at the time it adopted Verizon's Virginia UNE rates. The mere fact that a cost factor **has** changed does not necessarily invalidate rates that were originally set according to a TELRIC process.³⁰² We further recognize that updated UNE rates will be established in the Virginia Arbitration Proceeding that is currently pending, and we are confident that these rates will comply with TELRIC principles.³⁰³

89. Based on the record in this proceeding and a review of the underlying state proceedings, we have serious concerns as to whether the rates established by the Virginia Commission in its state rate proceeding are TELRIC-compliant. We need not, however, address the merits of these arguments here. In this proceeding, Verizon relies on rates established by the Virginia Commission and also on reduced UNE rates. As discussed below, we conclude that these rates are within the range of rates that a reasonable application of TELRIC principles would produce, and, in particular, that Verizon's loop and non-loop recurring UNE rates pass a benchmark analysis. As this Commission stated in prior section 271 orders, the purpose of our benchmark analysis is to provide confidence that a rate, despite potential TELRIC errors, falls within the range that a reasonable application of TELRIC principles would produce.³⁰⁴ Thus, even if the Virginia Commission failed to apply the proper TELRIC methodology in every respect, the fact that Verizon's Virginia UNE rates pass a benchmark comparison to rates that are TELRIC-compliant provides a basis for our finding that, despite these alleged errors, Verizon's UNE rates fall within the range that a reasonable application of TELRIC principles would produce.

(Continued from previous page)

basic" TELRIC errors, WorldCom continues, or if costs have dropped significantly since the time of an initial state ratemaking decision, rates can be far in excess of TELRIC when a BOC applies for section 271 authority without the existence of any glaring error. *Id.*

³⁰¹ Bell Atlantic **New York Order**, 15 FCC Rcd at 4085-86, para. 247. See also *AT&T Corp. v. FCC*, 220 F.3d at 617; see *supra* para. 76.

³⁰² BellSouth **GeorgidLouisiana Order**, 17 FCC Rcd at 9066, para. 96

³⁰³ AT&T urges the Commission to "decline Verizon's invitation to abdicate its responsibilities under [s]ection 271 by relegating to a separate state proceeding under [s]ection 252 the issue of whether Verizon's current switching prices are TELRIC compliant. The 1996 Act requires the Commission, before granting a [s]ection 271 application, to determine whether the applicant's rates are just and reasonable – not merely that they were just and reasonable at some point years in the past." AT&T Supplemental Comments at 9. Here, we determine that Verizon's current UNE rates fall within the range that a reasonable application of TELRIC principles would produce. Thus, our reference to a future proceeding under section 252 does not in any way abdicate our responsibilities under section 271.

³⁰⁴ SWBT **Kansas/Oklahoma Order**, 16 FCC Rcd 6276, para. 82; Verizon **New Jersey Order**, 17 FCC Rcd at 12295 para. 49 (stating that when a state commission does not apply TELRIC principles or does so improperly, this Commission will look to rates in other section 271-approved states to see if the applicant's rates nonetheless fall within a range that a reasonable TELRIC-based rate proceeding would produce).

(i) **Loop Rates**

90. Commenters contend that Verizon's loop rates are too high to be TELRIC-compliant. WorldCom asserts that evidence submitted in the Virginia Arbitration Proceeding, including WorldCom's TELRIC-based calculation of loop rates, demonstrates that Verizon's Virginia loop rates are twice what they should be, but WorldCom does not allege any specific TELEUC error by the Virginia Commission concerning loop rates.³⁰⁵ AT&T, however, argues that Verizon's Virginia loop rates are not TELRIC-compliant because: (1) the underlying data used to compute loop rates is **stale**;³⁰⁶ (2) loop costs have decreased on a per-line basis according to ARMIS data;³⁰⁷ and (3) the loop rates do not reflect increased demand and the resulting decreased per-line loop **costs**.³⁰⁸ All of AT&T's arguments are premised on allegations that the passage of time has rendered Verizon's loop rates non-TELRIC-compliant because costs have decreased since the Virginia Commission gathered the data **to** complete its rate proceeding. AT&T does not, however, allege any error by the Virginia Commission in its development of Verizon's Virginia loop rates at the time it established those rates. Even assuming *arguendo* that commenters could demonstrate a TELRIC error, however, we find that Verizon's Virginia loop rates fall within the range of rates that a reasonable application of TELRIC principles would produce, as discussed below.

91. States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable **range** that correct application of TELRIC principles would **produce**.³⁰⁹ The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly (e.g., the state commission made a major methodological mistake or used **an** incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will **look** to rates in other section 271-approved states to see if the rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would **produce**.³¹⁰ In comparing the rates, the Commission has used its Synthesis Model to take into account the differences in the underlying costs between the applicant state and the comparison

³⁰⁵ See WorldCom Comments at 16, 19. For the reasons discussed above, we find that it would be arbitrary and inappropriate to permit AT&T and WorldCom to rely in this proceeding on evidence submited ~~in~~ the Virginia Arbitration Proceeding. See *supra* discussion paras. 75-76.

³⁰⁶ AT&T Comments at 7; AT&T Pitkin Decl., para. 27

¹⁰⁷ AT&T Pitkin Decl., para. 28.

³⁰⁸ AT&T Pitkin Decl., para. 29; see also AT&T Reply at 3-4

³⁰⁹ *Verizon Rhode Island Order*, 17 FCC Rcd at 33 19-20, para. 37.

³¹⁰ See *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17456-57, para. 63; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82

state.³¹¹ To determine whether a comparison with a particular state is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.³¹²

92. In its application, Venzon relies on a benchmark comparison of its loop rates in Virginia to its loop rates in New York to demonstrate that its rates fall within the range that a reasonable application of TELRIC principles would produce.” We note that, in every other section 271 proceeding where Verizon has relied on a benchmark analysis to demonstrate that its UNE rates fall within the range that a reasonable application of TELRIC principle would produce, we have agreed with Verizon and commenters that New York is an appropriate anchor state for purposes of a benchmark analysis.”³¹³ Indeed, the benchmark analysis submitted by AT&T in this proceeding uses New York as the anchor state.” We agree with Verizon and AT&T that New York is an appropriate benchmark state,³¹⁴ and, significantly, no commenter contends otherwise. In our *Rhode Island Order*, we commended the New York commission for the thoroughness of its recent rate proceeding and found that New York **was an** appropriate benchmark state.” In light of that conclusion and the absence of any objection from the parties,

³¹¹ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9000, para. 22; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 57; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 65; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

³¹² See *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order* 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63; *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

³¹³ Verizon Virginia Application at 51-52; Verizon Woltz/Garzillo/Prosini Decl., paras. 74-75. Verizon contends that its Virginia loop rates are TELRIC-compliant but also relies on a benchmark analysis to New York rates. Verizon Virginia Application at 48-52; Verizon Woltz/Garzillo/Prosini Decl., paras. 74-75.

³¹⁴ See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64; *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 39; *Verizon Maine Order*, 17 FCC Rcd at 11679, para. 32; *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 50.

³¹⁵ See AT&T Comments at 3; AT&T Pitkin Decl., para. 6;

³¹⁶ We note that, prior to the Bell Atlantic/NYNEX merger, New York and Virginia were part of different BOCs -- New York was part of NYNEX and Virginia was part of Bell Atlantic. The Commission has determined previously that such a comparison is appropriate nonetheless. In the *Verizon Pennsylvania Order*, the Commission clarified that “[w]hile a comparison state’s rates must have been found reasonable, the remaining criteria previously set forth should be treated as indicia of the reasonableness of the comparison.” *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64. Thus, although the other criteria are useful to assure us that a comparison is meaningful, the absence of any one of them does not render a comparison meaningless. See *id.* There, the Commission permitted a benchmark comparison of Verizon’s Pennsylvania rates to its New York rates. *Id.* Pennsylvania, like Virginia, was part of Bell Atlantic.

¹¹⁷ *Verizon Rhode Island Order*, 17 FCC Rcd at 3324-27, paras. 48-53.